IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.16067 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**NO**
2	To be referred to the Reporter or not ?	**NO**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**NO**
5	Whether it is to be circulated to the civil judge ?	**NO**

==========

ST ANNE'S SCHOOL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR HJ NANAVATI for Petitioner(s) : 1,
MR APURVA A DAVE, AGP for Respondent(s) : 1
MR HEMANG R RAWAL for MR AD OZA for Respondent : 2

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 15/10/2007
ORAL JUDGMENT

(1) Learned advocate for the petitioner seeks permission to amend the petition by deleting certain portion of the petition at the

beginning of the petition and consequential amendment. Permission granted. The petition is taken up for hearing after the learned advocate has carried out the amendment in the Court.

(2) RULE. Learned advocates appearing for the respective parties are directed to waive service of rule. Considering the view that the Court is inclined to adopt, the petition is taken up for final hearing and disposal today.

(3) The petitioner-Trust runs Primary, Secondary and Higher Secondary schools in Gujarati as well as Primary School in English medium at Deesa Town.

(4) The petitioner applied for commencing secondary section in English medium from June 2007. The application moved by the petitioner-Trust came to be rejected by the respondent-Board vide order dated 18.04.2007. The petitioner carried the matter in appeal.

However, vide order dated 25.05.2007 the appellate authority confirmed the order made by the respondent-Board.

(5) The learned advocate for the petitioner has assailed the impugned orders on the ground that the order of the appellate authority and the order of the respondent-Board are both without application of mind and do not give reasons which are germane to the issue.

(6) Learned Assistant Government Pleader, appearing on behalf of the appellate authority, has supported the order made by the appellate authority on the ground that out of 33 rooms available 27 rooms are being used as class rooms and, therefore, appropriate accommodation for the chamber of the principal, library, laboratory, staff room, etc. are not available. It was, therefore, urged that the appeal was rightly rejected and no interference is warranted.

(7) Learned advocate appearing for the respondent-Board submitted that the Board has given three reasons and considering the relevant provisions of the Act, namely, The Gujarat Secondary Education Act, 1972 (the Act) as well as The Secondary Education Regulations, 1974 (the Regulations), the order made by the respondent-Board is correct. That already 14 classes of Gujarati Primary School plus 07 classes of English Primary School and 07 classes of non-granted Secondary School are running in the premises. That as per the report of the representative of District Education Officer staff profile approval has not been obtained after carrying out regular recruitment. The last reason is that one Agarwal High School with English medium is functioning at a distance of 50 mtrs. One Vivekanand School with English medium is also functioning at a nearby distance. He, therefore, submitted that in the circumstances the impugned order made by the respondent-

Board is not required to be interfered with.

(8) Having gone through the orders made by the respondent-Board as well as the appellate authority it is apparent that both the orders have been made without application of mind and cannot be sustained. The respondent-Board has stated one of the reasons that the staff profile after regular recruitment has not been approved. A school which is seeking registration cannot be expected to recruit staff even before registration is granted. At the most proposed staff profile may be the requirement as provided in prescribed Form-I under Regulation No.9 of the Regulations. Similarly, under Regulation No.9(7) when one talks of requirement of non-teaching and teaching staff as per prescribed qualifications, one has to read the same in light of the language employed, namely,

> "(7) No secondary school shall be registered by the Board or continued to be registered unless it fulfills the following

requirements, namely:--”

In other words, the requirement of staff is to be read in context of school seeking continuation, namely, where a registration already granted is sought to be cancelled. Hence, the aforesaid reason is, to say the least, not germane at the stage when an application for registration is moved by a new school.

(9) Similarly, the other reason regarding two other schools being nearby is merely a statement of fact. There is nothing on record to show whether the said schools have objected to or not. In this context if order of appellate authority is perused it reflects that the school which is located at a distance of 50 mtrs. has issued a No Objection Certificate. Hence, even this reason assigned by the respondent-Board does not support the stand of the respondent authorities.

(10) In the aforesaid facts and circumstances of the case, the impugned order dated 18.04.2007 passed by the respondent-Board, and the order of the appellate authority dated 25.05.2007 are hereby quashed and set aside. The application seeking registration moved by the petitioner shall stand revived and the respondent-Board shall pass a fresh order, after giving adequate opportunity of hearing to the petitioner.

(11) The petition is allowed accordingly. Rule made absolute. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

***

Bhavesh*